

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

K. T., )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 4:16-CV-165 CAS  
 )  
 CULVER-STOCKTON COLLEGE, et al., )  
 )  
 Defendants. )

**MEMORANDUM AND ORDER**

This matter is before the Court on review of the file. On June 30, 2016, plaintiff filed her Answer to defendant A. B.'s Counterclaim, which was due on June 1, 2016 (Doc. 41). See Rule 12(a)(1)(B), Federal Rules of Civil Procedure. Separately, plaintiff filed a motion for leave to file her Answer to defendant A. B.'s Counterclaim out of time, with the consent of defendant A. B.'s counsel (Doc. 42). Plaintiff also filed her "Responses to Affirmative Defenses by A.B." (Doc. 43).

**Motion for Leave to File Out of Time**

The Court will grant plaintiff's motion for leave to file her Answer to defendant A. B.'s Counterclaim out of time, but notes that plaintiff erred by filing her Answer prior to obtaining leave of Court to do so. Plaintiff's counsel is advised that when leave to file a document is sought, the document for which leave is required must be submitted as an attachment to the motion for leave, and should not be filed as a separate document. See Administrative Procedures for Case Management/Electronic Case Filing, Sec. II.B. In the future, any document that requires leave of Court must be filed in accordance with this procedure.

## Response to Affirmative Defenses

Rule 7(a) of the Federal Rules of Civil Procedure specifies the pleadings that are permitted to be filed in a federal civil case. The Rule states:

**(a) Pleadings.** Only these pleadings are allowed:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

Rule 7(a), Fed. R. Civ. P. (emphasis added).

Under Rule 7, the pleadings generally conclude when there is a responsive pleading to a complaint, a third-party complaint, or an answer containing a counterclaim or crossclaim. See 2 James Wm. Moore, et al., Moore's Federal Practice § 7.02[7][a] (3d ed. 2014). “All defenses or allegations in the last such responsive pleading are deemed to be denied, including affirmative defenses.” Id.; see Rule 8(b)(6), Fed. R. Civ. P. (“If a responsive pleading is not required, an allegation is considered denied or avoided.”). As a result, “a reply is allowed only on a court order and in limited circumstances.” 2 Moore's Federal Practice, § 7.02[7][a]. “A clear showing of necessity or of extraordinary circumstances of a compelling nature will usually be required before the court will order a reply. Even an allegation of new matter that goes beyond the allegations of the responsive pleading is not a sufficient ground for a reply. Id., § 7.02[7][b]. “Thus, replies to affirmative defenses generally will not be permitted or required.” Id.

In this case, plaintiff has filed an answer to the counterclaim. Plaintiff’s response to defendant A. B.’s affirmative defenses, which is actually a reply to A. B.’s Answer, does not

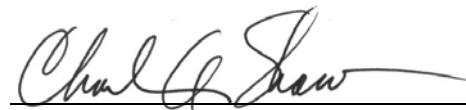
indicate a clear showing of necessity or of extraordinary circumstances of a compelling nature, and is unnecessary as affirmative defenses are deemed denied. Because the Court did not order plaintiff to file a reply, her Response is not properly filed under Rule 7(a), Fed. R. Civ. P., and will be stricken from the record.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for leave to file her Answer to Defendant A. B.'s Counterclaim out of time is **GRANTED**. [Doc. 42]

**IT IS FURTHER ORDERED** that plaintiff's Responses to Affirmative Defenses by A.B. is **STRICKEN** from the record of this case. [Doc. 43]

**IT IS FURTHER ORDERED** that the Clerk of the Court shall delete from the record of this matter Document 43, plaintiff's Responses to Affirmative Defenses by A.B. (docketed as "Memorandum re 32 Answer to Amended Complaint, Counterclaim *Affirmative Defenses by A.B.*").



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CHARLES A. SHAW  
UNITED STATES DISTRICT JUDGE

Dated this 1st day of July, 2016.